



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)
c/o Attorney Angela Canellos
631 N Mayfair Rd
Wauwatosa, WI 53226

DECISION

MDV-67/52819

PRELIMINARY RECITALS

Pursuant to a petition filed March 19, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Waukesha County Dept. of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on April 19, 2002, at Waukesha, Wisconsin. The record was held open for one day for the county to fax exhibits to the Division of Hearings and Appeals (DHA).

The issue for determination is whether the county agency correctly discontinued petitioner's institutional MA effective April 1, 2002, and created a divestment period of January through June, 2002.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)
c/o Attorney Angela Canellos
631 N Mayfair Rd
Wauwatosa, WI 53226

Representative:

Frank Dentice, paralegal
c/o Attorney Angela Canellos
631 N Mayfair Rd
Wauwatosa, WI 53226

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Nancy Loss, ESS, ESS
Waukesha County Health & Human Serv
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Waukesha County. The petitioner entered a nursing home on December 3, 2001.
2. The petitioner has a daughter and a son.
3. On February 19, 1998, the petitioner used her own funds to purchase a Certificate of Deposit (CD) in the amount of \$32,340.20. This CD was deposited in Mutual Savings Bank account #81910004589 in the names of (petitioner) or (petitioner's son) or (petitioner's daughter). See Exhibits 15. On January 15, 2002, this account contained \$32,812. See Exhibit 7.
4. On January 11, 2002, \$4,000 was withdrawn from petitioner's Mutual Savings Bank checking account # 319142. See Exhibit 8. On January 14, 2002, from that \$4,000 withdrawal, a check of \$2,000 was issued to petitioner's son and \$2,000 to her daughter as gifts. See Exhibit 11.
5. On January 15, 2002, \$10,938.35 was withdrawn from the Mutual Savings Bank account #81910004589 for petitioner's son, petitioner's daughter and the petitioner herself. See Exhibits 7 & 8. That same day, a check was issued to (petitioner's son) in the amount of \$10,938.35, a check in the amount of \$10,938.35 was issued to (petitioner's daughter), and a check in the amount of \$10,938.35 was issued to the petitioner. See Exhibits 9 & 10.
6. The county agency sent a February 27, 2002 manual negative notice to the petitioner discontinuing her institutional MA effective April 1, 2002, due to divestment from jointly held assets pursuant to the MA Handbook, Appendix 14.7.0. See Exhibit 2. This notice stated that on January 15, 2002 jointly held assets were reduced in the amount of \$21,876.68 (\$10,938.35 X 2); and gifts were distributed on January 14, 2002 in the amount of \$4,000 (\$2,000 X 2) for a total divestment of \$25,876.68. See Exhibit 2. This same notice also explained how the county agency had calculated petitioner's divestment period to be six months (January, 2002 through June, 2002). See Exhibit 2.
7. The county agency sent a March 12, 2002 Request for Verification to the petitioner specifically requesting by March 22, 2002 that petitioner provide verification that petitioner's son or daughter made an initial investment of their own funds to purchase the February, 1998 Certificate of Deposit in the amount of \$32,340.20. Exhibit 14. The petitioner failed to provide any verification.
8. During the hearing, the petitioner was unable to provide any proof that the February, 1998 purchase of the Certificate of Deposit in question in this case was purchased by anyone other than the petitioner (not in part from the funds of petitioner's children). See Exhibit 16.

DISCUSSION

A divestment occurs when an institutionalized individual, his spouse, or another person acting on his behalf, transfers assets for less than fair market value, on or after the individual's "look-back date." Wis. Stat. § 49.453(2)(a). The "look-back date" is defined as 36 months before, or with respect to trusts, 60 months before, the first date the individual is both institutionalized and an MA applicant. Ibid., (1)(f). If such a transfer occurs, the individual is ineligible for MA for nursing home services for a number of months determined by totaling the value of all assets transferred during the look-back period and dividing that amount by the average monthly cost to a private patient of nursing facility services at the time of the MA application. Ibid., (3)(b). Currently, this monthly nursing facility cost is \$4,075. MA Handbook, Appendix 14.5.0. The ineligibility period begins with the month of the divesting transfer of assets. Ibid., (3)(a).

In this case, the month of divestment was January, 2002 when the petitioner withdrew funds from the Home Savings Accounts and made payments and gifts to her son and daughter totaling \$25,876.68. See Finding of Fact #3, #4, #5 & #6. The county agency correctly calculated the petitioner's divestment to be \$25,876.68. \$25,876.68 divided by the \$4,075 average monthly Nursing home cost equals a divestment period of six months from the January, 2002 divestment acts.

A parallel divestment definition is found at Wis. Admin. Code § HFS 103.065(4), and states in the parts relevant here, as follows:

(4) DIVESTMENT. (a) *Divestment resulting in ineligibility.* An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value within 30 months . . . immediately before or at any time after the date the individual applies for MA while institutionalized, shall be determined to have divested. . .

(Emphasis added).

The MA Handbook provides the following statement regarding jointly held assets:

When an institutionalized person owns an asset in common with another person and when s/he or the other person or any person acting on their behalf **transfers** the asset during the lookback period or anytime thereafter, s/he may be penalized for divestment if the transfer:

1. Reduces or eliminates the institutionalized person's ownership or control of the asset, or
2. Limits the institutionalized person's right to sell or otherwise dispose of the asset.

MA Handbook, Appendix 14.7.0. The instant case certainly fits the criteria for divestment of jointly held bank accounts. In fact, section 14.7.0 gives an example of a divestment which is similar to the facts of this case.

There is no dispute in the record that the bank account containing the CD in question was a jointly held bank account. During the hearing, Mr. Dentice submitted affidavits by petitioner's son and daughter alleging that each of them had invested 1/3 of the initial deposit on February 19, 1998 to fund the \$32,340.20 Certificate of Deposit. See Exhibits 12 and 13. However, there is simply no evidence in the record that petitioner's son or daughter made such an initial investment. On the contrary, the county sent a March 12, 2002 verification request which specifically asked for any proof that petitioner's children had made any initial investment of their own funds to purchase the CD in question. The petitioner never responded to this request. Moreover, during the hearing, when questioned by this administrative law judge (ALJ), the petitioner's representative was unable to provide any proof that (petitioner's son) or (petitioner's daughter) had contributed any of their own funds to the purchase of the February, 1998 Certificate of Deposit (or any earlier alleged form of that CD). The petitioner's representative was unable to refute the county's case as stated in the above Findings of Fact.

The Wisconsin statute sec. 49.453 states in pertinent part in regard to divestment of assets:

(6) **Common ownership.** For purposes of sub. (2), if a covered individual holds an asset in common with another person in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected portion of the asset, is **considered to be transferred by the covered individual when an action is taken, either by the covered individual or**

by any other person, that reduces or eliminates the covered individual's ownership or control of the asset. (Emphasis added).

Sec. 49.453(6), Wis. Stats.

In the instant case, the action taken to distribute the Mutual Saving Bank joint account were the January 15, 2002 payment of \$10,938.35 to each of petitioner's children; and the January 11, 2002 gifting of \$4,000 from the jointly held account to petitioner's children. As a result, the petitioner's ownership of the CD was reduced to her 1/3 share of \$10,938.35. The petitioner's case simply lacked merit or credibility.

Based on the testimony and exhibits presented at the hearing, I conclude that the county agency met its burden of proof to clearly establish that petitioner had divested funds from the jointly held bank account. The petitioner failed to establish that either of her children made an initial investment in petitioner's CD and was also unable to refute the county agency's case that divestments did occur during January, 2002. Accordingly, the county agency correctly denied the petitioner's Institutional MA due to divestment, and correctly calculated a 6-month divestment ineligibility period from January, 2002 through June, 2002.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner's Institutional MA effective April 1, 2002 due to divestment, and correctly determined that her period of ineligibility due to divestment was for the period from January, 2002 through June, 2002.

NOW, THEREFORE, it is **ORDERED**

The petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 5th day of
June, 2002

/sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals
71/GMW